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8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10

11 MARIO SALAZAR-SANTIAGO, )  
12 )

13 Plaintiff, )

14 v. )

15 NANCY A. BERRYHILL,  
Acting Commissioner of Social Security, )

16 Defendant. )  
17

Case No. CV 17-02213-JEM

MEMORANDUM OPINION AND ORDER  
AFFIRMING DECISION OF THE  
COMMISSIONER OF SOCIAL SECURITY

18 PROCEEDINGS

19 On March 21, 2017, Mario Salazar-Santiago ("Plaintiff" or "Claimant") filed a complaint  
20 seeking review of the decision by the Commissioner of Social Security ("Commissioner")  
21 denying Plaintiff's applications for Social Security Disability Insurance benefits and  
22 Supplemental Security Income benefits. The Commissioner filed an Answer on July 10, 2017.  
23 On October 27, 2017, the parties filed a Joint Stipulation ("JS"). The matter is now ready for  
24 decision.

25 Pursuant to 28 U.S.C. § 636(c), both parties consented to proceed before this  
26 Magistrate Judge. After reviewing the pleadings, transcripts, and administrative record ("AR"),  
27 the Court concludes that the Commissioner's decision must be affirmed and this case  
28 dismissed with prejudice.

## BACKGROUND

Plaintiff is a 58 year-old male who applied for Social Security Disability Insurance benefits on January 12, 2013, and Supplemental Security Income benefits on January 15, 2013, alleging disability beginning October 17, 2011. (AR 27.) The ALJ determined that Plaintiff had not engaged in substantial gainful activity since October 17, 2011, the alleged onset date. (AR 29.)

Plaintiff's claims were denied initially on October 31, 2013, and on reconsideration on January 30, 2014. (AR 27.) Plaintiff filed a timely request for hearing, which was held before Administrative Law Judge ("ALJ") Joan Ho on June 9, 2015, in Orange, California. (AR 27.) Plaintiff appeared and testified at the hearing with the assistance of a Spanish interpreter and was represented by counsel. (AR 27.) Vocational expert ("VE") Joseph H. Torres also appeared and testified at the hearing. (AR 27.)

The ALJ issued an unfavorable decision on July 29, 2015. (AR 27-34.) The Appeals Council denied review on January 23, 2017. (AR 1-3.)

## DISPUTED ISSUES

As reflected in the Joint Stipulation, Plaintiff raises the following disputed issues as grounds for reversal and remand:

1. Whether the ALJ's assessed residual functional capacity has the support of substantial evidence.
2. Whether the ALJ properly considered the testimony of Plaintiff.

## STANDARD OF REVIEW

Under 42 U.S.C. § 405(g), this Court reviews the ALJ's decision to determine whether the ALJ's findings are supported by substantial evidence and free of legal error. Smolen v. Chater, 80 F.3d 1273 , 1279 (9th Cir. 1996); see also DeLorme v. Sullivan, 924 F.2d 841, 846 (9th Cir. 1991) (ALJ's disability determination must be supported by substantial evidence and based on the proper legal standards).

Substantial evidence means "more than a mere scintilla,' but less than a preponderance." Saelee v. Chater, 94 F.3d 520, 521-22 (9th Cir. 1996) (quoting Richardson v.

1 Perales, 402 U.S. 389, 401 (1971)). Substantial evidence is “such relevant evidence as a  
2 reasonable mind might accept as adequate to support a conclusion.” Richardson, 402 U.S. at  
3 401 (internal quotation marks and citation omitted).

4 This Court must review the record as a whole and consider adverse as well as  
5 supporting evidence. Robbins v. Soc. Sec. Admin., 466 F.3d 880, 882 (9th Cir. 2006). Where  
6 evidence is susceptible to more than one rational interpretation, the ALJ’s decision must be  
7 upheld. Morgan v. Comm’r of the Soc. Sec. Admin., 169 F.3d 595, 599 (9th Cir. 1999).  
8 “However, a reviewing court must consider the entire record as a whole and may not affirm  
9 simply by isolating a ‘specific quantum of supporting evidence.’” Robbins, 466 F.3d at 882  
10 (quoting Hammock v. Bowen, 879 F.2d 498, 501 (9th Cir. 1989)); see also Orn v. Astrue, 495  
11 F.3d 625, 630 (9th Cir. 2007).

## 12 THE SEQUENTIAL EVALUATION

13 The Social Security Act defines disability as the “inability to engage in any substantial  
14 gainful activity by reason of any medically determinable physical or mental impairment which  
15 can be expected to result in death or . . . can be expected to last for a continuous period of not  
16 less than 12 months.” 42 U.S.C. §§ 423(d)(1)(A), 1382c(a)(3)(A). The Commissioner has  
17 established a five-step sequential process to determine whether a claimant is disabled. 20  
18 C.F.R. §§ 404.1520, 416.920.

19 The first step is to determine whether the claimant is presently engaging in substantial  
20 gainful activity. Parra v. Astrue, 481 F.3d 742, 746 (9th Cir. 2007). If the claimant is engaging  
21 in substantial gainful activity, disability benefits will be denied. Bowen v. Yuckert, 482 U.S. 137,  
22 140 (1987). Second, the ALJ must determine whether the claimant has a severe impairment or  
23 combination of impairments. Parra, 481 F.3d at 746. An impairment is not severe if it does not  
24 significantly limit the claimant’s ability to work. Smolen, 80 F.3d at 1290. Third, the ALJ must  
25 determine whether the impairment is listed, or equivalent to an impairment listed, in 20 C.F.R.  
26 Pt. 404, Subpt. P, Appendix I of the regulations. Parra, 481 F.3d at 746. If the impairment  
27 meets or equals one of the listed impairments, the claimant is presumptively disabled. Bowen,  
28 482 U.S. at 141. Fourth, the ALJ must determine whether the impairment prevents the

1 claimant from doing past relevant work. Pinto v. Massanari, 249 F.3d 840, 844-45 (9th Cir.  
2 2001). Before making the step four determination, the ALJ first must determine the claimant's  
3 residual functional capacity ("RFC"). 20 C.F.R. § 416.920(e). The RFC is "the most [one] can  
4 still do despite [his or her] limitations" and represents an assessment "based on all the relevant  
5 evidence." 20 C.F.R. §§ 404.1545(a)(1), 416.945(a)(1). The RFC must consider all of the  
6 claimant's impairments, including those that are not severe. 20 C.F.R. §§ 416.920(e),  
7 416.945(a)(2); Social Security Ruling ("SSR") 96-8p.

8 If the claimant cannot perform his or her past relevant work or has no past relevant work,  
9 the ALJ proceeds to the fifth step and must determine whether the impairment prevents the  
10 claimant from performing any other substantial gainful activity. Moore v. Apfel, 216 F.3d 864,  
11 869 (9th Cir. 2000). The claimant bears the burden of proving steps one through four,  
12 consistent with the general rule that at all times the burden is on the claimant to establish his or  
13 her entitlement to benefits. Parra, 481 F.3d at 746. Once this prima facie case is established  
14 by the claimant, the burden shifts to the Commissioner to show that the claimant may perform  
15 other gainful activity. Lounsbury v. Barnhart, 468 F.3d 1111, 1114 (9th Cir. 2006). To support  
16 a finding that a claimant is not disabled at step five, the Commissioner must provide evidence  
17 demonstrating that other work exists in significant numbers in the national economy that the  
18 claimant can do, given his or her RFC, age, education, and work experience. 20 C.F.R.  
19 § 416.912(g). If the Commissioner cannot meet this burden, then the claimant is disabled and  
20 entitled to benefits. Id.

## 21 THE ALJ DECISION

22 In this case, the ALJ determined at step one of the sequential process that Plaintiff has  
23 not engaged in substantial gainful activity since October 17, 2011, the alleged onset date. (AR  
24 29.)

25 At step two, the ALJ determined that Plaintiff has the following medically determinable  
26 severe impairments: mild degenerative joint disease of the right shoulder; minimal osteoarthritis  
27 of the left shoulder; mild degenerative changes in the cervical spine; and history of ruptured  
28

1 rotator cuff and subacromial impingement in the right shoulder, status-post rotator cuff repair.  
2 (AR 29-30.) The ALJ also found Plaintiff's hypertension to be nonsevere. (AR 30.)

3 At step three, the ALJ determined that Plaintiff does not have an impairment or  
4 combination of impairments that meets or medically equals the severity of one of the listed  
5 impairments. (AR 30.)

6 The ALJ then found that Plaintiff had the RFC to perform light work as defined in 20  
7 CFR §§ 404.1567(b) and 416.967(b), with the following limitations:

8 Claimant is limited to frequent pushing and pulling with the right upper  
9 extremity; and frequent overhead reaching with the right upper extremity.

10 (AR 30-32.) In determining the above RFC, the ALJ made a determination that Plaintiff's  
11 subjective symptom allegations were "not entirely credible." (AR 31.)

12 At step four, the ALJ found that Plaintiff is able to perform his past relevant work as a  
13 sewing machine operator. (AR 32-33.)

14 Consequently, the ALJ found that Claimant is not disabled, within the meaning of the  
15 Social Security Act. (AR 33.)

## 16 DISCUSSION

17 The ALJ decision must be affirmed. The ALJ properly considered the medical evidence  
18 and properly discounted Plaintiff's subjective symptom allegations. The ALJ's RFC is  
19 supported by substantial evidence.

### 20 I. THE ALJ'S RFC IS SUPPORTED BY SUBSTANTIAL EVIDENCE

#### 21 A. Relevant Federal Law

22 The ALJ's RFC is not a medical determination but an administrative finding or legal  
23 decision reserved to the Commissioner based on consideration of all the relevant evidence,  
24 including medical evidence, lay witnesses, and subjective symptoms. See SSR 96-5p; 20  
25 C.F.R. § 1527(e). In determining a claimant's RFC, an ALJ must consider all relevant evidence  
26 in the record, including medical records, lay evidence, and the effects of symptoms, including  
27 pain reasonably attributable to the medical condition. Robbins, 446 F.3d at 883.  
28

1 In evaluating medical opinions, the case law and regulations distinguish among the  
2 opinions of three types of physicians: (1) those who treat the claimant (treating physicians); (2)  
3 those who examine but do not treat the claimant (examining physicians); and (3) those who  
4 neither examine nor treat the claimant (non-examining, or consulting, physicians). See 20  
5 C.F.R. §§ 404.1527, 416.927; see also Lester v. Chater, 81 F.3d 821, 830 (9th Cir. 1995). In  
6 general, an ALJ must accord special weight to a treating physician's opinion because a treating  
7 physician "is employed to cure and has a greater opportunity to know and observe the patient  
8 as an individual." Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989) (citation omitted). If  
9 a treating source's opinion on the issues of the nature and severity of a claimant's impairments  
10 is well-supported by medically acceptable clinical and laboratory diagnostic techniques, and is  
11 not inconsistent with other substantial evidence in the case record, the ALJ must give it  
12 "controlling weight." 20 C.F.R. §§ 404.1527(d)(2), 416.927(d)(2).

13 Where a treating doctor's opinion is not contradicted by another doctor, it may be  
14 rejected only for "clear and convincing" reasons. Lester, 81 F.3d at 830. However, if the  
15 treating physician's opinion is contradicted by another doctor, such as an examining physician,  
16 the ALJ may reject the treating physician's opinion by providing specific, legitimate reasons,  
17 supported by substantial evidence in the record. Lester, 81 F.3d at 830-31; see also Orn, 495  
18 F.3d at 632; Thomas v. Barnhart, 278 F.3d 947, 957 (9th Cir. 2002). Where a treating  
19 physician's opinion is contradicted by an examining professional's opinion, the Commissioner  
20 may resolve the conflict by relying on the examining physician's opinion if the examining  
21 physician's opinion is supported by different, independent clinical findings. See Andrews v.  
22 Shalala, 53 F.3d 1035, 1041 (9th Cir. 1995); Orn, 495 F.3d at 632. Similarly, to reject an  
23 uncontradicted opinion of an examining physician, an ALJ must provide clear and convincing  
24 reasons. Bayliss v. Barnhart, 427 F.3d 1211, 1216 (9th Cir. 2005). If an examining physician's  
25 opinion is contradicted by another physician's opinion, an ALJ must provide specific and  
26 legitimate reasons to reject it. Id. However, "[t]he opinion of a non-examining physician cannot  
27 by itself constitute substantial evidence that justifies the rejection of the opinion of either an  
28 examining physician or a treating physician"; such an opinion may serve as substantial

evidence only when it is consistent with and supported by other independent evidence in the record. Lester, 81 F.3d at 830-31; Morgan, 169 F.3d at 600.

### **B. Analysis**

Plaintiff alleges he is disabled because of right shoulder surgery, arthritis in his left shoulder, and high blood pressure. (AR 267.) The ALJ found that Plaintiff had the severe impairments of mild degenerative joint disease of the right shoulder; minimal osteoarthritis of the left shoulder; mild degenerative changes in the cervical spine; and history of ruptured rotator cuff in the right shoulder. (AR 29.) The ALJ assessed Plaintiff with a RFC for light work but limited to “frequent pushing and pulling with the right upper extremity” and to “frequent overhead reaching with the right upper extremity.” (AR 29.) Plaintiff contends that these limitations are not restrictive enough and not supported by substantial evidence. The Court disagrees.

On April 12, 2012, Claimant underwent acromioplasty rotator cuff repair and arthroplasty on the right shoulder. (AR 31.) By August 2012, Plaintiff had increased range of motion after four physical therapy sessions. (AR 31.) He last saw his orthopedic specialist in September 2012. (AR 32.) Treatment has been conservative, limited to exercise, physical therapy, and medication (ibuprofen). (AR 32.)

In November 2012, X-ray imaging showed degenerative joint changes in the left shoulder with no evidence of fracture or dislocation. (AR 31.) Plaintiff was recommended for a cortisone injection for his left shoulder, but he never received it. (AR 31, 475.) Nonetheless, his left shoulder pain improved. (AR 31, 475.) A November 4, 2014 treatment note indicated Plaintiff had pain in his right shoulder (not his left) but also had full range of motion. (AR 31, 607.)

In October 2013, consulting internist Dr. Azizollah Karamlou examined Plaintiff who had full range of motion in his cervical and lumbar spine and needed no assistive devices to ambulate. (AR 31, 484, 486.) Dr. Karamlou also found that Claimant was able to perform pushing and pulling, imposing no restrictions. (AR 486.) He further found that Plaintiff had pain in both shoulders and “difficulty to raise the shoulders above the head,” but with full

1 muscle strength. (AR 31, 484-486.) Dr. Karamlou did not quantify Plaintiff's ability for  
2 overhead reaching. Also in October 2013, State reviewing physician Dr. Richard Surrusco  
3 assessed a light work RFC, finding that Plaintiff's ability to push and pull was limited in both  
4 upper extremities, but no specific limitations were assessed. (AR 81.) He did limit Plaintiff to  
5 only "occasional" overhead reaching with both arms. (AR 81.) In January 2014, another State  
6 reviewing physician Dr. S. Garcia agreed with Dr. Surrusco's RFC assessment. (AR 99-100.)

7 The ALJ's RFC limits Plaintiff to "frequent pushing and pulling with the right upper  
8 extremity." (AR 30.) This finding is a reasonable interpretation of the evidence. Dr. Karamlou  
9 who actually examined Plaintiff imposed no limitations on pushing and pulling. (AR 486.)  
10 Dr. Surrusco and Dr. Garcia, State agency reviewing physicians who did not examine Plaintiff,  
11 opined that Plaintiff's ability to push and pull was limited in both upper extremities but did not  
12 quantify the limitation. (AR 81, 99-100.) The ALJ reasonably gave Dr. Karamlou significant  
13 weight and the State Agency reviewers some but not full weight. (AR 32.) Plaintiff may  
14 disagree with the ALJ's interpretation of the evidence in regard to pushing and pulling, but it is  
15 the ALJ's responsibility to resolve conflicts in the medical evidence and ambiguities in the  
16 record. Andrews, 53 F.3d at 1039. Where the ALJ's interpretation of the record is reasonable  
17 as it is here, it should not be second-guessed. Rollins v. Massanari, 261 F.3d 853, 857 (9th  
18 Cir. 2001.)

19 The ALJ's RFC also limits Plaintiff to "frequent overhead reaching with the right upper  
20 extremity." (AR 30.) Dr. Karamlou found that Plaintiff had "difficulty to raise the shoulders  
21 above the head," but did not quantify Plaintiff's ability for overhead reaching. (AR 31, 486.) In  
22 contrast, Dr. Surrusco and Dr. Garcia opined that Plaintiff was limited to "occasional overhead  
23 reaching with both arms." (AR 81, 99-100.) The ALJ specifically rejected the State agency  
24 physician opinions limiting overhead reaching with the left upper extremity. (AR 32.) The ALJ  
25 cited a treatment note dated November 4, 2014, indicating a complaint of pain only in the right  
26 shoulder (for which he was prescribed only ibuprofen), but with full range of motion. (AR 31,  
27 69, 607.) The ALJ also noted that her RFC was supported by Plaintiff's reported and  
28 demonstrated functional ability. (AR 32.) Plaintiff was treated conservatively with exercise,



1 physical therapy, and medication. (AR 32.) He also engaged in activities like housework,  
2 errands, walking, and driving. (AR 31.) An ALJ may reject a physician's opinion that is  
3 contradicted by a claimant's observed or admitted abilities or other evidence that indicates his  
4 or her symptoms are not as severe as alleged. Bayliss, 427 F.3d at 1216. The ALJ rejected  
5 the opinions of Dr. Surrusco and Dr. Garcia as to overhead reaching for specific, legitimate  
6 reasons supported by substantial evidence.

7 Any error in the ALJ's RFC as to overhead reaching, moreover, would be harmless. See  
8 Tommasetti v. Astrue, 533 F.3d 1035, 1038 (9th Cir. 2008) (error is harmless when it is  
9 "inconsequential to the ultimate nondisability determination"), quoting Stout v. Comm'r, 454  
10 F.3d 1050, 1055-56 (9th Cir. 2006). The sewing machine operator position (DOT 786.685-030)  
11 does not require any overhead reaching. Harper v. Colvin, 2015 WL 4042195, at \*5 (W.D. Tex.  
12 June 30, 2015) ("overhead reaching limitation normally would not affect the ability to perform  
13 the job of sewing machine operator as generally performed"); Rodriguez v. Colvin, 2015 WL  
14 778852, at \*4 (W.D. Tex. Feb. 23, 2015) ("nothing in the DOT's job description indicates that  
15 overhead reaching or handling is required for the job of sewing machine operator"). Thus,  
16 whether the RFC included a limitation to occasional versus frequent overhead reaching, or  
17 applied to one or both arms, does not matter or affect the outcome. Plaintiff would be able to  
18 return to his past relevant work as a sewing machine operator as generally performed. (AR 32-  
19 33, 67.) Plaintiff offered no reply to this argument. (JS 17:23-24.)

## 20 **II. THE ALJ DID NOT ERR IN DISCOUNTING PLAINTIFF'S** 21 **SUBJECTIVE SYMPTOMS**

### 22 **A. Relevant Federal Law**

23 The test for deciding whether to accept a claimant's subjective symptom testimony turns  
24 on whether the claimant produces medical evidence of an impairment that reasonably could be  
25 expected to produce the pain or other symptoms alleged. Bunnell v. Sullivan, 947 F.2d 341,  
26 346 (9th Cir. 1991); see also Reddick v. Chater, 157 F.3d 715, 722 (9th Cir. 1998); Smolen, 80  
27 F.3d at 1281-82 esp. n.2. The Commissioner may not discredit a claimant's testimony on the  
28 severity of symptoms merely because they are unsupported by objective medical evidence.

1 Reddick, 157 F.3d at 722; Bunnell, 947 F.2d at 343, 345. If the ALJ finds the claimant's pain  
2 testimony not credible, the ALJ "must specifically make findings which support this conclusion."  
3 Bunnell, 947 F.2d at 345. The ALJ must set forth "findings sufficiently specific to permit the  
4 court to conclude that the ALJ did not arbitrarily discredit claimant's testimony." Thomas, 278  
5 F.3d at 958; see also Rollins, 261 F.3d at 856-57; Bunnell, 947 F.2d at 345-46. Unless there is  
6 evidence of malingering, the ALJ can reject the claimant's testimony about the severity of a  
7 claimant's symptoms only by offering "specific, clear and convincing reasons for doing so."  
8 Smolen, 80 F.3d at 1283-84; see also Reddick, 157 F.3d at 722. The ALJ must identify what  
9 testimony is not credible and what evidence discredits the testimony. Reddick, 157 F.3d at  
10 722; Smolen, 80 F.3d at 1284.

#### 11 **B. Analysis**

12 In determining Plaintiff's RFC, the ALJ concluded that Plaintiff's impairments reasonably  
13 could be expected to cause his alleged symptoms. (AR 31.) The ALJ, however, also found  
14 that Plaintiff's statements regarding the intensity, persistence, and limiting effects of his alleged  
15 symptoms were "not entirely credible." (AR 31.) Because the ALJ did not make any finding of  
16 malingering, she was required to provide clear and convincing reasons supported by  
17 substantial evidence for discounting Plaintiff's credibility. Smolen, 80 F.3d at 1283-84;  
18 Tommasetti, 533 F.3d at 1039-40. The ALJ did so.

19 First, the ALJ found that Plaintiff's subjective symptoms were inconsistent with the  
20 objective medical evidence, including clinical observations and treatment history. (AR 33.) An  
21 ALJ is permitted to consider whether there is a lack of medical evidence to corroborate a  
22 claimant's alleged symptoms so long as it is not the only reason for discounting a claimant's  
23 credibility. Burch v. Barnhart, 400 F.3d 676, 680-81 (9th Cir. 2005). Here, no medical source  
24 opined that Plaintiff was disabled or had limitations that precluded all work. Plaintiff's right  
25 shoulder surgery required no follow-up after September 2012. (AR 32.) His right shoulder  
26 post-surgery was effectively mitigated with exercise and physical therapy. (AR 30-31.)  
27 X-ray imaging showed only mild degenerative joint changes with no evidence of fracture or  
28 dislocation in his left shoulder. (AR 31.) Although a later imaging study indicated possible

1 rotator cuff impingement, the ALJ explained that post-hearing treatment records reported only  
2 generalized pain treated with ibuprofen. (AR 31-32.) Plaintiff did not challenge the ALJ's  
3 determination that Plaintiff's high blood pressure was not severe. (AR 29-30.)

4 Second, Plaintiff received only conservative treatment in the form of exercise, physical  
5 therapy and medication (ibuprofen). The ALJ may consider conservative treatment in  
6 evaluating credibility. Tommasetti, 533 F.3d at 1039. Impairments that can be controlled  
7 effectively with medication are not disabling. Warre v. Comm'r of Soc. Sec., 439 F.3d 1001,  
8 1006 (9th Cir. 2006).

9 Third, Plaintiff failed to pursue recommended means to alleviate his pain. In January  
10 2013, he was authorized to receive a cortisone injection for left shoulder pain but never  
11 followed up. Nonetheless, he reported his pain improved. (AR 30, 475, 575.) An ALJ may  
12 consider an unexplained or inadequately explained failure to seek treatment or to follow a  
13 prescribed course of treatment in evaluating credibility. Molina v. Astrue, 674 F.3d 1104, 1112  
14 (9th Cir. 2012).

15 Fourth, the ALJ also noted daily activities inconsistent with disabling symptoms, which is  
16 a legitimate consideration in evaluating credibility. Bunnell, 947 F.2d at 345-46.

17 The ALJ discounted Plaintiff's subjective symptom testimony for clear and convincing  
18 reasons supported by substantial evidence.

19 \* \* \*

20 The ALJ's nondisability determination is supported by substantial evidence and free of  
21 legal error.

## 22 ORDER

23 IT IS HEREBY ORDERED that Judgment be entered affirming the decision of the  
24 Commissioner of Social Security and dismissing this case with prejudice.

25  
26 DATED: April 6, 2018

27 /s/ John E. McDermott  
JOHN E. MCDERMOTT  
UNITED STATES MAGISTRATE JUDGE